May 11, 2017

Via Electronic Court Filing
Hon. Robert M. Levy, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: ***Cando v. Big City Yonkers, Inc., et al.***
Case No.: 16 Civ. 1154 (RML)
&
Robinson v. Big City Yonkers, Inc., et al.
Nassau County Index No.: 600159/2016

Dear Judge Levy:

We are Class Counsel in the first-filed case, *Robinson v. Big City Yonkers, Inc.*, where the Honorable Denise L. Sher, A.J.S.C, has certified a class of drivers that completely encompasses and extends beyond the proposed class in this matter. *Compare Robinson v. Big City Yonkers, Inc.*, Index No. 600159/2016, 2017 N.Y. Slip Op. 30177(U), 2017 WL 440568, at * 6 (Sup. Ct. Jan. 17, 2017) (submitted to Your Honor as ECF No. 120-1); *and* ECF No. 24 (Am. Compl.) ¶ 19.

In advance of tomorrow's telephone conference, we write jointly with the Defendants to advise the Court that *Robinson* Plaintiffs and Defendants will be seeking to the collective and class claims in this case. This will allow the settlement approval process to proceed before Justice Sher, who has scheduled a conference, for next Tuesday, May 16, 2017, to discuss the proposed settlement and set a deadline for preliminary settlement approval motion papers. The *Robinson* settlement, if approved, will dispose of all claims in this case.

We also write, independently of Defendants, to respond to *Cando* Plaintiffs' letter (ECF No. 134) and provide the Court with additional information about the class-wide settlement *Robinson* Plaintiffs negotiated with Defendants.

On September 29, 2016, our client, Class Representative Frank Robinson, sought to protect the now-certified *Robinson* class by moving to intervene in this case and asking the Court to reject the "reverse-auction" settlement that the parties proposed in this case. ECF No. 80 (Pre-Mot. Ltr. to J. Kuntz); ECF Nos. 94-96 (Mot. to Intervene). *Robinson* Plaintiffs demonstrated, *inter alia*, that (1) the settlement was reached by excluding *Robinson* counsel from the negotiations after all parties attended a mediation together and undercutting *Robinson* counsel's negotiating position; (2) the actual settlement amount was $185,000 less than the $750,000 settlement amount the *Cando* parties originally reported to this Court;[1] and (3) proposed class

[1] *Cando* Plaintiffs' explanation for the reduced settlement amount, that there would be no

counsel allocated $50,000 to be paid to his wholly-owned claims administration company without any competitive bidding. ECF No. 113 (Mem. of Law in Supp. of Mot. to Intervene) §§ I(A)-(B).

After Robinson filed his papers, Defendants' counsel and *Robinson* Class Counsel engaged in preliminary negotiations over an improved class-wide settlement and agreed to attend mediation to attempt to negotiate an adequate resolution. The *Robinson* parties hired Alfred G. Feliu[2] as a mediator, and scheduled the mediation for April 26, 2017. For the sake of transparency, to assure a global resolution, and to allow *Cando* counsel to protect his right to attorneys' fees, the *Robinson* parties invited *Cando* counsel to attend the mediation. Ex. A (Email, Feb 15, 2017 3:26 p.m.)

During a full-day mediation, *Robinson* Class Counsel negotiated a $1,400,000 settlement with Defendants, which the *Robinson* Plaintiffs and Defendants believe adequately resolves both *Robinson* and this case. The parties memorialized the terms of the proposed settlement in a memorandum of understanding ("MOU") at the end of the mediation. *See* Ex. B (MOU). Although *Cando* Plaintiffs' counsel left the mediation before the settlement was reached or the MOU terms were negotiated, the *Robinson* parties ensured that the MOU adequately protected *Cando* counsel's right to recover attorneys' fees by providing that, if counsel could not agree, the issue would be submitted to binding arbitration. *Id.* ¶ 7.

Nevertheless, attorneys' fees have been *Cando* counsel's primary focus since the mediation. On May 2, without inquiring as to whether the case settled, *Cando* counsel emailed *Robinson* counsel, "[p]lease advise of your availability for a call with CK regarding legal fees since he's back in town." Ex. C (Email, May 2, 2015, 5:27 p.m.). When *Robinson* Class Counsel responded by sending *Cando* Plaintiffs' counsel the MOU and asking him to sign it, Ex. D (Email, May 2, 2017, 7:20 p.m.), *Cando* Plaintiffs' counsel responded, "I will take a look but prefer to resolve legal fee issue now which is going to be the big elephant in the room." Ex. E (Email, May 3, 2017, 4:46 p.m.). After a further exchange, *Cando* Plaintiffs' counsel wrote to this Court, again focusing on his legal fees. Ex. F (Email, May 4, 2017, 10:19 a.m.); Ex. G (Email, May 4, 2017, 2:11 a.m.); ECF No. 134 (*Cando* Pls.' Letter).

---

reversion, is illusory. Although there was no reversion in the reduced settlement, this term did not benefit the class because the parties provided that unclaimed funds, no matter how substantial, would be paid to a charity, not redistributed to the class. ECF No. 99-1 (Settlement Agreement) ¶ 3.1(E); ECF No. 113 (Mem. of Law in Supp. of Mot. to Intervene) § I(B)(1) at p. 12-13.

[2] http://www.feliuadr.com/

The *Cando* Plaintiffs insist that the parties seek approval of the *Robinson* settlement before this Court, and not in Nassau County where the class has already been certified, and that this Court evaluate *Cando* counsel's entitlement to attorneys' fees. ECF No. 134. However, their primary argument – that the *Cando* case contains New Jersey state law claims – is without merit. The *Cando* case does not contain New Jersey claims, nor did the proposed *Cando* settlement.[3]

Nassau County is the proper venue for settlement approval. First, the *Robinson* Plaintiffs and the Defendants have agreed to proceed with settlement approval before Justice Sher. Ex. B (MOU) ¶¶ 6, 11. Second, the case has progressed much further there – Justice Sher has already certified *Robinson* as a class action and appointed *Robinson* Plaintiffs' counsel as Class Counsel. *See* ECF No. 120-1 (Class Cert. Order). Third, the certified class encompasses the entirety of the *Cando* case, plus additional class members and workweeks only covered by *Robinson*. Fourth, the current settlement was negotiated between *Robinson* Class Counsel and Defendants and is the direct result of *Robinson* Plaintiffs' intervention motion and objections to *Cando* Plaintiffs' counsel's inadequate proposed settlement. Finally, at the request of the parties, Justice Sher has scheduled a status conference to discuss the settlement for May 16, 2017, at 9:30 a.m. Ex. H (eTrack Update). The parties have also requested that Justice Sher set the deadline for the parties to move for preliminary approval as June 9, 2017.

For these reasons, *Robinson* Plaintiffs request that the Court stay the collective and class claims in this case and allow the settlement approval process to proceed before Justice Sher.

Thank you for your continued attention to this matter.

Respectfully submitted,

/s/ Troy L. Kessler
Troy L. Kessler

cc: Counsel for *Cando* Plaintiffs (via ECF)
Counsel for Defendants (via ECF)

[3] In any event, there is no reason that a New York State Supreme Court, a court of unlimited jurisdiction, could not approve a settlement containing claims under the laws of another state. *See Kagen v. Kagen*, 21 N.Y.2d 532, 537 (1968) ("[T]he Supreme Court is a court of original, unlimited and unqualified jurisdiction.").